

Office of the Solicitor, DOI			
(37) Draft EA with comments from Mark Rutzick, NOAA counsel	09/25/03	Draft EA contains comments from NOAA counsel Mark Rutzick	Attorney-Client Privileged
(38) E-mail from Lamont Jackson, NOAA to Michelle Morgan, FWS re: Urgent EA	09/29/03	E-mail included in the record but an attachment is withheld as it contains comments from counsel for NOAA.	Attorney-Client Privileged
(39) E-mail from Elizabeth Stevens, FWS to Rick Sayers, FWS re: new EA for the Counterpart Reg Package	09/30/03	E-mail is contained in the record but has one line redacted which speaks about DOI attorney review of the EA	Attorney-Client Privileged
(40) E-mail from Rick Sayers, FWS to Ann Klee, DOI re: new EA with comments from Mark Rutzick, NOAA counsel	10/07/03	Attachment to e-mail is withheld from the record as it contains comments from counsel for NOAA.	Attorney-Client Privileged
(41) E-mail from Mark Rutzick, NOAA counsel to Michelle Morgan, FWS re: Revisions to Final Healthy Forests Counterpart Rule	11/20/03	E-mail and its attachment is withheld as they reflect comments from counsel	Attorney-Client Privileged
(42) E-mail from Mark Rutzick, counsel for NOAA to Michelle Morgan, FWS re: final version of regs	11/21/03	E-mail is contained in the record but text has been redacted as text reflects comments from counsel for NOAA	Attorney-Client Privileged
(43) E-mail from Mark Rutzick, counsel for NOAA to Roger Eckert, NOAA OGC re: final version of	11/21/03	E-mail contains comments from two attorneys with the NOAA Office of General Counsel	Attorney-Client Privileged

regulations			
(44) E-mail from Michelle Morgan, FWS to Mark Rutzick, NOAA counsel re: final version of regulations	11/25/03	E-mail contains comments provided by Mark Rutzick, counsel for NOAA	Attorney-Client Privileged
(45) E-mail from Lynn A. Johnson, DOI Office of the Solicitor to Michelle Morgan, FWS re: ACA Agreement	02/27/04	E-mail contains a comment from counsel on the ACA.	Attorney-Client Privileged
(46) E-mail from Peg Romanik, Office of the Solicitor to Gary Frazer, FWS re: ACA	02/28/04	E-mail contains comments from counsel on the ACA	Attorney-Client Privileged
(47) E-mail from Rick Sayers, FWS to Marc Bosch, USFS re: ACA v. 16	03/01/04	E-mail contains an updated version of the ACA with comments from USFS counsel	Attorney-Client Privileged
(48) E-mail from Marc Bosch, USFS to Michelle Morgan, FWS and others re: ACA	03/01/04	E-mail contains comments made by USFS counsel.	Attorney-Client Privileged
(49) E-mail from Michelle Morgan, FWS to Peg Romanik, Office of the Solicitor re: ESA ACA	03/01/04	E-mail contains one comment from counsel that has been redacted	Attorney-Client Privileged
(50) E-mail from Michelle Morgan, FWS to Lynn Johnson, DOI Office of the Solicitor re: ACA Agreement	03/01/04	E-mail contains questions from FWS to counsel re: the ACA	Attorney-Client Privileged
(51) E-mail from Lynn Johnson, DOI	03/01/04	E-mail contains language drafted by	Attorney-Client Privileged

Office of the Solicitor to Michelle Morgan, FWS and others re: ACA		counsel, along with questions and comments from counsel relating to ACA	
(52) E-mail from Rick Sayers, FWS to Lynn Johnson, DOI Office of the Solicitor re: ACA	03/01/04	E-mail contains language drafted by counsel along with reaction of FWS to the proposed language.	Attorney-Client Privileged
(53) E-mail from Marc Bosch, USFS to Rick Sayers, FWS re: ACA	03/01/04	E-mail contains language drafted by USFS counsel Alan Groesbeck with reaction of USFS to the proposed language	Attorney-Client Privileged

THOMAS L. SANSONETTI  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division  
JEAN E. WILLIAMS, Chief  
SETH M. BARSKY, Assistant Chief  
Wildlife and Marine Resources Section  
MARK A. BROWN, Senior Trial Attorney (DC Bar No. 470050)  
KRISTEN BYRNES FLOOM, Trial Attorney (DC Bar No. 469615)  
P.O. Box 7369  
Washington, D.C. 20044-7369  
Telephone: (202) 305-0210  
Facsimile: (202) 305-0275

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

DEFENDERS OF WILDLIFE, et al.	)	
	)	Civ. No. 04-1230(GK)
Plaintiffs,	)	
	)	
v.	)	
	)	
GALE NORTON, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS' NOTICE OF FILING ADMINISTRATIVE RECORD  
FOR JOINT COUNTERPART ENDANGERED SPECIES ACT  
CONSULTATION REGULATIONS**

PLEASE TAKE NOTICE that Defendants are hereby filing the Administrative Record of Defendants Donald Evans, U.S. Department of Commerce and William T. Hogarth, National Oceanic and Atmospheric Administration, for the Joint Counterpart Endangered Species Act Section 7 Consultation Regulations for National Fire Plan projects. Attached hereto as Exhibit 1

is the certification of William T. Hogarth, Assistant Administrator, National Oceanic and Atmospheric Administration. Attached hereto as Exhibit 2 is the Index to the Administrative Record, including an index of each document withheld on the basis of privilege.

Dated: February 11, 2004

Respectfully submitted,

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
JEAN E. WILLIAMS, Chief  
SETH M. BARSKY, Assistant Chief  
Wildlife and Marine Resources Section

s/ Kristen Byrnes Floom  
MARK A. BROWN, Senior Trial Attorney  
(DC Bar No. 470050)  
KRISTEN BYRNES FLOOM, Trial Attorney  
(DC Bar No. 469615)  
U.S. Department of Justice  
Environment and Natural Resources Division  
Wildlife and Marine Resources Section  
P.O. Box 7369  
Washington, D.C. 20044-7369  
Telephone: (202) 305-0210  
Facsimile: (202) 305-0275  
Email: Mark.A.Brown@usdoj.gov  
Kristen.Floom@usdoj.gov

## **CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the Administrative Record of Defendants Donald Evans, U.S. Department of Commerce and William T. Hogarth, National Oceanic and Atmospheric Administration, for the Joint Counterpart Endangered Species Act Section 7 Consultation Regulations for National Fire Plan projects were served on the 11th day of February, 2005 by hand delivery to:

Eric R. Glitzenstein  
Meyer & Glitzenstein  
Suite 700  
1601 Connecticut Ave., NW  
Washington, DC 20009

Counsel for Plaintiffs

J. Michael Klise  
Crowell & Moring LLP  
1001 Pennsylvania Ave., N.W.  
Washington, DC 20004-2595

Counsel for Intervenors

/s/ Kristen Byrnes Floom  
KRISTEN BYRNES FLOOM

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE, et al.,

Plaintiffs,

v.

GALE NORTON et al.,

Defendants.

CIV. No. 04-1230 (GK)

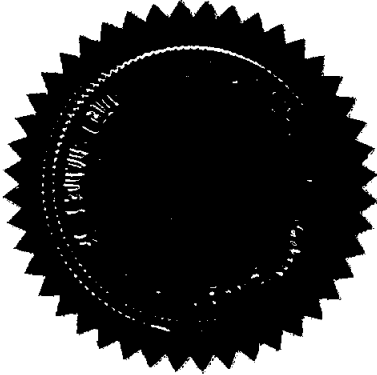
**CERTIFICATION OF  
ADMINISTRATIVE RECORD**

I, William T. Hogarth, state the following:

1. I am the Assistant Administrator, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS).
2. I am the custodian of the documents in the possession of NMFS that make up the administrative record for the Joint Counterpart Endangered Species Act Section 7 Regulations for National Fire Plan projects; the Alternative Consultation Agreement to Implement Section 7 Counterpart Regulations between the USDA Forest Service, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service; and development of the related training program, which are the subject of litigation in this case.
3. I certify that, to the best of my knowledge, the annexed documents are a true and correct administrative record in this action. To the best of my knowledge, each document therein is a true and correct copy of the original document located in the files of NMFS.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of February, 2005.



William T. Hogarth  
WILLIAM T. HOGARTH



***Index to National Marine Fisheries Service***

***Administrative Record***

***Defenders of Wildlife et al. v. Norton, et al.***  
***Civ. No. 04-1230***

### Unknown Dates

Date	To	From	Document	Document #
UNKNOWN		Laurie Allen	Memorandum for the Record- Categorical Exclusion Under NEPA for Proposed Joint Counterpart ESA Section 7 Regulations	1
UNKNOWN			50 CFR Part 402	2
UNKNOWN			Alternative Consultation Agreement	3
UNKNOWN			Alternative Consultation Agreement w/edits	4
UNKNOWN			Draft NLAA Regulations	5
			"THIS ENTRY INTENTIONALLY LEFT BLANK"	6
UNKNOWN			Generalized Monitoring Program Outline for Alternative Consultation Agreements	7
UNKNOWN	Wm Hogarth	Don Knowles	Joint Counterpart Endangered Species Act Section 7 Consultation Regulation	8
UNKNOWN			Action To Reduce Wildfire Risk Restore Previously Burned Areas Fuels Treatment or Restoration Action	9
UNKNOWN			Activity Type & Component Summary	10
UNKNOWN			15 Activities Under the National Fire Plan	11
UNKNOWN		Wm Hogarth	MEMORANDUM FOR THE RECORD: Categorical Exclusion Under the National Environmental Policy Act (NEPA) for Proposed Joint Counterpart ESA Section 7 Regulations	12
UNKNOWN	Wm Hogarth	Don Knowles	Proposed Rule for Joint Counterpart Endangered Species Act Section 7 Consultation Regulations-Decision Memo	13
UNKNOWN			Draft-Self-Certification of Not Likely to Adversely Affect Determinations by Action Agencies	14
			"THIS ENTRY INTENTIONALLY LEFT BLANK"	15
UNKNOWN			Questions & Answers-Esa Section 7 Counterpart Regulations	16

**January -December 1995**

[illegible]

**January -December 2001**

[illegible]

**January -December 2003**

<b>Date</b>	<b>To</b>	<b>From</b>	<b>Document</b>	<b>pages</b>
1/8/03			(Draft) NLAA Regulations	28
1/16/03	Lamont	Patrick Leonard	Draft-Proposed Rule-Joint Counterpart Endangered Species Act Section 7 Consultation Regulation	29
1/20/03	Chuck	Patrick Leonard	Draft-Proposed Rule-Joint Counterpart Endangered Species Act Section 7 Consultation Regulation	30
1/21/03	SWR-Glasgow	Patrick Leonard	Draft-Proposed Rule-Joint Counterpart Endangered Species Act Section 7 Consultation Regulation	31
1/22/03		Patrick Leonard	Draft-Proposed Rule-Joint Counterpart Endangered Species Act Section 7 Consultation Regulation	32
1/23/03	Barry Thom	Russ Strach	Email-Re: Revised Counterpart Draft Proposed Rule	33
1/24/03		Patrick Leonard	Draft-Proposed Rule-Joint Counterpart Endangered Species Act Section 7 Consultation Regulation	34
1/27/03	Don	Unknown	Re: activities/subactivities be included in counterpart reg	35
1/25/03	Barry Thom	Spencer Hovenkamp	New Draft of Counterpart Regs	36
1/29/03			Proposed Changes to 50 CFR Part 402	37
2/5/03			Proposed Changes to 50 CFR Part 402	38
2/5/03			Wednesday PM Draft to 50 CFR Part 402	39
2/6/03			Notes from 02/07 Meeting-Re: Proposed Changes to 50 CFR Part 402	40
2/13/03	William Hogarth	Laurie Allen	Draft-Master Consultation Agreement for Implementation of Alternative Consultation Procedures	41
2/24/03		Patrick Leonard	Proposal to Amend 50 CFR 402.02	42
2/24/03		Patrick Leonard	Draft-Changes to 50 CFR 402	43
2/24/03			Draft 2-Master Consultation Agreement for Implementation of Alternative Consultation Procedures	44
2/25/03	Don Knowles	Barry Thom	Email-Re: Idaho Pilot Project	45
2/27/03	Spencer Hovenkamp	Don Knowles	Email-Re: HFI Counterpart Reg	46
3/5/03	Mike Crouse	Patty Dornbusch	Email-Re: HFI Draft Counterpart Regs and Issues Advisory	47
3/6/03	Barry Thom	Patty Dornbusch	Re: National Fire Plan Monitoring Question	48
3/10/03			Updates to Proposed changes to 50 CFR Part 402	49
3/14/03			Updates to Proposed changes to 50 CFR Part 402	50
3/18/03	Bill Hogarth	Don Knowles	Joint Counterpart ESA Section 7 Consultation Regulation ISSUES ADVISORY	51
3/25/03		Patrick Leonard	Updates to Proposed Changes to 50 CFR Part 402	52
3/27/03		Patrick Leonard	Updates to Proposed Changes to 50 CFR Part 402	53
3/28/03		Patrick Leonard	Updates to Proposed Changes to 50 CFR Part 402	54
4/1/03		Patrick Leonard	Updates to Proposed Changes to 50 CFR Part 402	55
4/2/03		Patrick Leonard	Updates to Proposed Changes to 50 CFR Part 402	56
4/2/03	Laure Allen	Barry Thom	Email RE: Most Up-To-Date Healthy Forests Counterpart Reg	57
4/7/03		Patrick Leonard	(Rick's Version) Updates to Proposed Changes to 50 CFR Part 402	58
4/9/03		Patrick Leonard	Updates to Proposed Changes to 50 CFR Part 402	59
4/15/03	Linda Kucera	Barry Thom	Email-(Another Try) RE: Proposed Changes to 50 CFR attachments w/held (attorney/client privilege)	60
4/15/03	Lamont Jackson	Rick Sayers	Email-(Another Try-Part 2) RE: Proposed Changes to 50 CFR attachments w/held (attorney/client privilege)	61
4/15/03	Lamont Jackson	Rick Sayers	Email-(Part 3) Proposed Changes to 50 CFR	62

**January-December 2004**

<b>Date</b>	<b>To</b>	<b>From</b>	<b>Document</b>	<b>Doc #</b>
1/6/04	Ann Garrett	Barry Thom	Email Regarding Region -HQ Memo on Draft ACA	84
1/14/04	Lamont Jackson	Barry Thom	Email Regarding Reminder of Counterpart Conference	85
			Call (Training Outline)	
1/14/04	Ann Garrett	Barry Thom	Email Regarding Weekly Counterpart Meetings with	86
			Regard to Training	
1/14/04	Ann Garrett	Russ Strach	Email- Draft of an ACA, Conference Call (1/7/04)	87
1/14/04	Russ Strach	Penny Ruvelas	Email- Draft of an ACA, Conference Call (1/7/04)	88
1/15/04	Penny Ruvelas	Russ Strach	Email Regarding Regional Agreement Being a Part of	89
			the ACA	
1/20/04	Barry Thom	Garwin Yip	Email concerning the Current Draft of the USDA-FS ACA	90
1/20/04	Barry Thom	Russ Strach	Email Concerning the PACFISH/INFISH Strategy	91
1/22/04	Ann Garrett	Lamont Jackson	Email Concerning Counterpart Reg Training Sessions-Update	
1/22/04	Ann Garrett	Lamont Jackson	Email Concerning the Counterpart Reg Conf Call	92
1/22/04	Marc Bosch	Ann Garrett	Email Regarding Draft ACA	93
1/22/04	Russ Strach	Ann Garrett	Email Regarding Comments on Draft ACA	94
1/28/04	ACA Committee	Marc Bosch	Email-Counterpart Reg & ACA & Training Update	95
1/29/04	Russ Strach/Others	Ann Garrett	Email Coordinating Counterpart Reg, ACA & Training Update	96
2/4/04	DOI	Marc Bosch	Email Counterpart Regulations-ACA-Tng Update	97
			Feb Meeting Postponed	
2/4/04	Marc Bosch	Michelle Morgan	Email-Feb Counterpart Reg Meeting-Postponed Continuation	98
2/5/04	Karl Stein	Marc Bosch	Email on Counterpart Training Sessions Options	99
2/5/04	Marc Bosch	Michelle Morgan	Email Regarding Additional Options on Counterpart Sessions	100
2/6/04	Mike Crouse	Ann Garrett	Email Regarding Overvies of Counterpart Reg & ACA at	101
			ESA Streamlining Workshop on 02/18	
2/6/04	Marc Bosch	Michelle Morgan	Email RE: Counterpart Reg Training Session w/attachments	102
2/6/04	Mike Crouse	Ann Garrett	Email RE: Counterpart Reg Draft Not Ready	103
2/6/04	Mike Crouse	Lamont Jackson	Email-Briefing to Jim Lecky on Latest Counterpart Reg	104
2/6/04	Michelle Morgan	Lamont Jackson	Email Confirming a 1:00 pm Meeting to Discuss Counterpart	105
			Reg	
2/6/04	Karl Stein & Others	Marc Bosch	Email RE: Training Options & Timing of Training Regarding	106
			Counterpart Reg	
2/9/04	Lamont Jackson	Michelle Morgan	Email w/ Attachment Regarding Next Version of the	107
			Monitoring Program	
2/9/04	Ann Garrett	Maria Boroja	Email Regarding Counterpart Reg Monitoring	108
2/10/04	Ann Garrett	Penny Ruvelas	Email-Counterpart Training Options-Update on FS-BLM	109
			Discussion	
2/10/04	Michelle Morgan/ Others	Marc Bosch	Email-Key Dates on Counterpart Reg (Conf Call on 2/11)	110
			w/ Attachment	
2/10/04	Marc Bosch	Michelle Morgan	Email w/ Attachment Regarding the Section of the	111
			Monitoring & Periodic Evaluation Program for the ACA	
2/11/04	Ann Garrett	Russ Strach	Email Apprising Ann Garrett As to Who to Speak with	112
			Regarding PACFISH/INFISH	
2/11/04	Penny Ruvelas	Ann Garrett	Email Regarding Counterpart Training Options	113
2/11/04	Ann Garrett	Penny Ruvelas	Email Advising Ann of Best Staff Members to Speak With	114
			Regarding FS-BLM	
2/11/04	Marc Bosch	Michelle Morgan	Email Concerning Sampling Strategy for the Monitoring	115
			Program with attachment	
2/11/04	Ann Garrett/Others	Michelle Morgan	Email-Counterpart Reg & Monitoring ("90" Samples)	116
2/11/04	Michelle Morgan	Karl Stein	Email-Edits for Monitoring Program (attachment)	117
2/11/04	Michelle Morgan	Marc Bosch	Email-Counterpart Reg Monitoring (Sample Size Project)	118
2/11/04	Marc Bosch	Michelle Morgan	Email-Counterpart Reg Monitoring (Sample Size Project)	119

**January-December 2004**

2/11/04	Ann Garrett/Others	Marc Bosch	Email-v.5 of ACA (w/attachments-updated version)	120
2/12/04	Michelle Morgan	Karl Stein	Email-Web-Based Training Module Update	121
2/12/04	Karl Stein	Michelle Morgan	Email w/attachments-ACA w/Updates (Draft 5)	122
2/12/04	Marc Bosch/Others	Michelle Morgan	Email w/attachments-v.5 of ACA (Marc's Version w/updates)	123
2/12/04	Ann Garrett	Marc Bosch	Email w/attachment-The Latest Version of the Counterpart Regulations Draft Alternative Consultation Agreement	124
2/13/04	Wm Hogarth	James Gladen	Letter RE: CFR 50 and Entering and Alternative Consultation Agreement with the National Marine Fisheries Service	125
2/13/04	Jim Lecky/Others	Lamont Jackson	Email (Draft ACA for Review) with attachments	126
2/13/04	Michelle Morgan	Ron Tucker	Email w/attachments-Joint Counterpart Endangered Species Act Section 7 Consultation Reg-Training	127
2/13/04	Lamont Jackson	Mike Crouse	Email w/attachments-Draft ACA for Review	128
2/17/04	Nancy Warren	Marc Bosch	Email with attachments-FWS/NMFS Regarding 99/95% Levels	129
2/17/04	Marc Bosch	Michelle Morgan	Email with attachments- Draft ACA for Review	130
2/17/04	Marc Bosch	Michelle Morgan	Email with attachments regarding samples (fewer than 90) w/1 error yield other percentages	131
2/17/04	Marc Bosch	Ann Garrett	Email Draft ACA for Review (binomial probability distribution)	132
2/18/04	Marc Bosch	Ann Garrett	Email w/attachments on ACA Comments	133
2/18/04	Ann Garrett	Joseph Skorupa	Email regarding how will NLAA determinations will be selected for monitoring and other issues <i>no document number assigned (error) tagged w/red strip</i>	
2/18/04	Ann Garret/Others	Marc Bosch	Email w/attachments regarding Training Descriptions, FS Letter of Intent	134
2/18/04	Ann Garrett/Others	Marc Bosch	Email with attachments-ESA Counterpart Regulations- New ACA Draft for Review	135
2/18/04	Phil Williams	Lamont Jackson	Email Regarding POTW edit	136
2/19/04	Marc Bosch	Ann Garrett	Email ESA Counterpart Reg-New ACA Draft for Review	137
2/19/04	Lamont Jackson	Michelle Morgan	Email with attachments regarding FWS Comments on the ACA	138
2/20/04	Marc Bosch	Michelle Morgan	Email-ESA Counterpart Reg-New ACA Draft for Review	139
2/20/04	Michelle Morgan	Marc Bosch	Email Regarding Changes to the New ACA Draft	140
2/20/04	Ann Garrett	Michelle Morgan	Email-(ACA) National Monitoring Team Comprised of FWS, NMFS & FS	141
2/20/04	Lamont Jackson	Ann Garrett	Email (continuation)-(ACA) National Monitoring Team Comprised of FWS, NMFS & FS	142
2/20/04	Michelle Morgan	Lamont Jackson	Email concerning FWS/NMFS Evaluating Projects (changes to ACA)	143
2/20/04	Ann Garrett	Lamont Jackson	Email concerning Draft ACA for Review	144
2/20/04	Lamont Jackson	Michelle Morgan	Email concerning Draft ACA for Review	145
2/20/04	Lamont Jackson	Michelle Morgan	Email (email subj line-call on ACA) concerning APA Impass	146
2/23/04	Ann Garrett	Mike Crouse	Email concerning ACA Training/Natinal Meeting	147
2/23/04	Michelle Morgan	Marc Bosch	Email ACA Version 10 with attachments	148
2/23/04	Ann Garrett	Mike Crouse	Email RE: ACA Training/National Meeting	149
2/23/04	Mike Crouse	Ann Garrett	Email Concerning ACA Training/Natinal Meeting & (Draft ACA) <i>no document number assigned (error) tagged w/red strip</i>	
2/24/04	Phil Williams	Ann Garrett	Email-Counterpart Regs, ACA & Training -Friday Update	150
2/24/04	Michelle Morgan	Marc Bosch	Email-24 Feb Draft for Agency Review, Concurrence & Signing with attachment	151
2/24/04	Mike Crouse	April Wolstencroft	Email w/attachments concerning BA Template (web based training for the counterpart reg)	152
2/25/04	Ann Garrett	Mike Crouse	Email-ACA 24 Feb Draft-for Agency Review, Concurrence & Signing	153

# January-December 2004

2/26/05	Marc Bosch	Ann Garrett	Email concerning Module 3 (with attachments)	154
2/27/04	Ann Garrett	Marc Bosch	Email-Powerpoint version 2 (Counterpart Regs) w/attachments	155
2/27/04	Ann Garrett	Lamont Jackson	Email-ACA 02/24 Draft for Agency Review, Concurrence & Signing	156
2/27/04	Michelle Morgan	Marc Bosch	Email-ESA CR ACA-Forest Service Version w/attachments	157
3/1/04	Michelle Morgan	Karl Stein	Email w/attachments-Counterpart Reg Tasks	158
3/1/04	Marc Bosch	Michelle Morgan/ Others	Email w/attachments-FS ACA v.16	159
3/1/04	Marc Bosch	Rick Sayers	Email w/attachments RE: FS ACA v.16 (Reviewed w/no Objections)	160
3/1/04	Phil Williams	Ann Garrett	Email w/attachments-ACA Training in Phoenix	161
3/1/04	Ann Garrett	Mike Crouse	Email-FYI...ACA	162
3/1/04	Ann Garrett	Penny Ruvelas	Email-ESA CR ACA-Forest Service Version	163
3/1/04	Ann Garrett	Wally Murphy	Email-ACA Training	164
3/1/04	Dwight Fielder	Marc Bosch	Email-FS ACA v.16	165
3/1/04	Phil Williams	Ann Garrett	Email-FS ACA v.16 (Monitoring Protocol)	166
3/1/04	Alan Groesbeck/ Others	Marc Bosch	Email-ACA F.1	167
3/1/04	Karl Stein/Others	Ann Garrett	Email-ACA & Training Modules & Attendees At Next Meeting	168
3/1/04	Alan Groesbeck/ Others	Marc Bosch	Email FS ACA v.17 w/attachments	169
3/1/04	Karl Stein	Wally Murphy	Email regarding Module 4	170
3/1/04	Ann Garrett	Mike Crouse	Email w/attachments regard ESA CR ACA-Forest Service	171
3/2/04	Mike Crouse	Russ Strach	Email-ACA Training Documents	172
3/2/04	Ann Garrett	Mike Crouse	Email-ACA Training & Linking Documents	173
3/2/04	Wally Murphy	Michelle Morgan	Email Regarding ACA Training and Action Agencies Having Ownership Over the Material Presented At the Training	174
3/2/04	Ann Garrett/Others	Marc Bosch	Email w/attachments-Final FS Counterpart Reg/ ACA, for Signature	175
3/2/04	Mike Crouse	Ann Garrett	Email (fyi...ACA) Briefing Rebecca Lent on the loss of "Complementary" Language	176
3/2/04	Mike Crouse	Ann Garrett	Email w/attachments-ACA Training in Phoenix & Opportunity to Submit Comments on the Training	177
3/2/04	Karl Stein	Rick Sayers	Email Concurring with Action Agencies Participating in ACA Training	178
3/2/04	Mike Crouse	Ann Garrett	Email ACA Training (Module 2)	179
3/2/04	Ann Garrett	BLM- T&E	Fax-BLM & FS Signature Pages	180
3/2/04	Dale Bosworth/FS		Alternative Consultation Agreement to Implement Sec 7 Counterpart Reg	181
3/3/04	Steven Williams- Fish &Wildlife		Signature Page (5 of 8) of ACA Agreement dated 03/03/04	182
3/3/04	Steven Williams- Fish &Wildlife		Signature Page (5 of 8) of ACA Agreement dated 03/03/04	183
3/3/04	Steven Williams- Fish &Wildlife		Signature Page (5 of 8) of ACA Agreement dated 03/03/04 Signature Blocks Listed in different	184
3/3/04	Karl Stein	Ann Garrett	Email Preliminary Comments (on Module 3)	185
3/3/04	Wm Hogarth		Alternative Consultation Agreement to Implement Sec 7 Counterpart Reg (Signed 3-3-04)	186
6/3/04	Wm Hogarth		Alternative Consultation Agreement to Implement Sec 7 Counterpart Reg (Signed 3-3-04)	187
3/4/04	Ann Garrett	Phil Williams	Email-Alternative Conservation Agreements (signed)	188
3/4/04	Rick Sayers	Marc Bosch	Email-Training Sessions and Hotels	189



**January-December 2004**

3/4/04	Ann Garrett	Carolyn Scafidi	Email-Alternative Conservation Agreements (signed) w/attachments	190
3/4/04		Marc Bosch	Email-Circulating ESA Counterpart Reg-Signed ACA w/attachments	191
3/4/04	Peggy Olwell	Marc Bosch	Email-Updated Implementatin Actions Table	192
3/8/04	Karl Stein	Ann Garrett	Email Phoenix & Comments on Module 3	193
3/8/04	Michelle Morgan	Wally Murphy	Email with attachments-Draft Certification Questions	194
3/8/04	Wally Murphy	Ann Garrett	Email-Draft Certification Questions	195
3/8/04	Ann Garrett	Phil Williams	Email-ACA Memo no document number assigned (error) tagged w/red strip	
3/8/04	Marc Bosch	Wally Murphy	Email-Module 4 Powerpoint w/attachments no document number assigned (error) tagged w/red strip	
3/8/04	Marc Bosch	Wally Murphy	Email-Draft Certification Questions w/attachments	196
3/8/04	Karl Stein	Marc Bosch	Email w/attachments-Module 3	197
3/8/04	Marc Bosch	Wally Murphy	Email w/attachments-Draft Certification Questions w/Answers	198
3/9/04	Ann Garrett	Penny Ruvelas	Email Discussion of Modules	199
3/9/04	Karl Stein	Michelle Morgan	Email concerning Module 3-version 3.9.04 (reviewing Marc's Comments & Setting-up Possible Conference Call	200
3/9/04		Laurie Allen	Memorandum for Regional Administrators-Office Directors RE: Implementation of The Section 7 Counterpart Reg for National Fire Plan Consultations (2 sets of attachments	201
3/10/04	Ann Garrett	Marc Bosch	Email-Analytical Framework Graphic(re: portraying the first 5 or 6 boxes as iterative (attachment)	202
3/11/04	Karl Stein	Michelle Morgan	Email w/attachments discussing Module 3 - version3.9.04 (w/changes)	203
3/11/04	Michelle Morgan	Ann Garrett	Email-Module - versiion 3.9.04 (Discussion of Changes)	204
3/11/04	Ann Garrett	Karl Stein	Email-Module 3 version 3.9.04 no document number assigned (error) tagged w/red strip	
3/12/04	Ann Garrett	Marc Bosch	Email-Draft Certification Questions Consolidated	205
3/12/04	Ann Garrett	Sherry Smith	Email with regards to LogOn and Password	206
3/12/04	Marc Bosch	Wally Murphy	Email Concerning 4 questions/Module w/attachments	207
3/15/04	Wally Murphy	Marc Bosch	Email w/attachments regarding FAQ's on CR	208
3/15/04	Ann Garrett	Karl Stein	Email w/attachments-Module 3 Review Comments & An Example of Current BA within the NWFP area	209
3/15/04	Karl Stein	Michelle Morgan	Email w/attachment-National Fire Plan Project Design & Consultation Process Training	210
3/15/04	Michelle Morgan	Marc Bosch	Module 3 Review Comments & an example of current Bas within the NWFP area no document number assigned (error) tagged w/red strip	
3/15/04	Ann Garrett	Karl Stein	Proposed Training for NFP	211
3/15/04	Karl Stein	Marc Bosch	Email w/aattachments-Training Session in NW	212
3/15/04	Ann Garrett	Charley Raines	Training for NW NFP Project Design & Consultation Process	213
3/15/04	Michelle Morgan	Karl Stein	Email w/attachments regarding Updated FAQs	214
3/16/04	Ann Garrett	Peggy Olwell	Email concerning CR Powerpoint w/attachments	215
3/16/04		Marc Bosch	Email w/attachments-Counterpart Reg Meeting & Training Agenda	216
3/16/04	Ann Garrett	Charley Raines	Email-Re: BLM website in the NFP Project Design	217
3/17/04		Charley Raines	Email re: NFP Project Design v. Counterpart Reg Process	218
3/18/04	Marc Bosch	Ann Garrett	Eamil w/attachment-Reviewing Terms for Consistency	219
3/18/04	Marc Bosch	Ann Garrett	Email with attachments regarding Alternative Consultation	220

# January-December 2004

			agreement	
3/18/04	Marc Bosch	Ann Garrett	Email regarding slides	221
3/19/04	Ann Garrett	Wally Murphy	Email regarding teaching Section 7 Class	222
3/19/04	Marc Bosch	Wally Murphy	Email w/attachments-Final Version of the	223
			Certification Questions	
3/19/04	Wally Murphy	Ann Garrett	Email sample question for module	224
3/21/04	Ann Garrett	Marc Bosch	Email-Updated FAQ and Contacts	225
3/22/04	Marc Bosch	Wally Murphy	Email-Updated FAQ and Contacts (FAQ related to BLM Web	226
			site	
3/22/04	Wally Murphy	Marc Bosch	Email Updated FAQ and contacts-Reply	227
3/22/04	Wally Murphy	Marc Bosch	Email Q&A and Contacts (latest version) w/attachments	228
3/22/04	Marc Bosch	Ann Garrett	Email-Presentation for Notebook w/attachments	229
3/22/04	Marc Bosch	Ann Garrett	Email-FAQs-List of Contacts	230
3/22/04	Ann Garrett	Mary Colligan	Email RE: POC for Fire Plan Questions	231
3/26/04	Sandra Watts	Marc Bosch	Email-Training Module, FS Server	232
3/26/04	Marc Bosch	Karl Stein	Email-Net Meeting Tested Successful-no document	
			number assigned (error) tagged w/red strip	
3/26/04	Sherry Smith	Marc Bosch	Email w/attachments-Web Module Questions	233
3/26/04	Karl Stein	Marc Bosch	Email w/attachments-Summary of CR and CA	234
3/29/04	Marc Bosch	Wally Murphy	Email w/attachments-Edited "Certification" Questions	235
3/29/04	Sherry Smith	Karl Stein	Email w/attachments-Director's Letters	236
3/29/04	Marc Bosch	Karl Stein	Email-Counterpart Reg Trining things to Complete	237
3/29/04	Karl Stein	Michelle Morgan	Email-LOC Example for Michelle and the ACA w/attachments	238
3/29/04	Jim Gladen/Others	Marc Bosch	Email-ESA Counterpart Reg Update After the Meeting/	239
			Training in Phoenix	
3/29/04	Michelle Morganb	Marc Bosch	Email-LOC Example for Michelle and the ACA w/attachments	240
			w/regard to a wildland fire supression project	
3/31/04	Sherry Smith	Michelle Morgan	Email RE: Module 1 Modification	241
3/30/04	Marie Boroja	Ann Garrett	Email-Forest Service Seeks to Drop Need for Outside	242
			Environmental Reviews on its Sactions Results concernsing	
			ESA, Clean Water & Invasive Species	
3/31/04	Ann Garrett/Others	Marc Bosch	Email Re: Resources, Final ACA's (w/attachments)	243
3/31/04	Michelle Morgan	Sherry Smith	Email-Module 1 Modification	244
04/05/04	Wally Murphy	Marc Bosch	Email-ACA Implementation Actions w/attachments	245
4/6/04	Sherry Smith	Marc Bosch	Email-(Glossary) Forest Service Definition of a BE.	246
4/8/04	Ron Tucker	Marc Bosch	Email-NFP Web Training	247
4/8/04	Marc Bosch	Ron Tucker	Email-NFP Web Training (certification completion)	248
4/19/04	Marc Bosch	Karl Stein	Email-Beta Test Compiled Version of Web-Based System	249
			for Counterpart Regulatins Training	
4/20/04	Karl Stein	Michelle Morgan	Email-Beta Test Compiled Version of Web-Based System	250
4/20/04	Karl Stein	Peggy Olwell	Email-Beta Test Compiled Version of Web-Based System	251
			for Counterpart Regulatins Training (test run of module)	
4/20/04	Peggy Olwell	Karl Stein	Email-changes to Training Program	252
4/20/04	Ann Garrett	Karl Stein	Email-Beta Test Compiled Version of Web-Based System	253
			for Counterpart Regulatins Training (who can access training)	
4/20/04	Michelle Morgan	Ann Garrett	Email-Beta Test Compiled Version of Web-Based System	254
			for Counterpart Regulations	
4/20/04	Karl Stein	Michelle Morgan	Email-Changes to Training Program	255
4/20/04	Karl Stein	Marc Bosch	Email-Changes to Training Program-All Changes Made	256
			to Web-Site	
4/22/04	Marc Bosch/Others	Sherry Smith	Email Subject Line: Status-Certification Assessment Pending	257
4/26/04	Peggy Olwell	Marc Bosch	Email-1B 2004-088, & Training Access w/attachments	258

## January-December 2004

[illegible]

*Defenders of Wildlife et al. v. Norton, et al.*  
*Civ. No. 04-1230*

ATTORNEY-CLIENT PRIVILEGED DOCUMENTS  
WITHHELD OR REDACTED FROM THE  
ADMINISTRATIVE RECORD FOR THE  
NATIONAL FIRE PLAN ENDANGERED SPECIES ACT  
SECTION 7 CONSULTATION COUNTERPART REGULATIONS, ALTERNATIVE  
CONSULTATION AGREEMENTS AND DEVELOPMENT OF TRAINING MODULE

Date	From	To	Subject
04/15/03	Barry Thom	Linda Kucera	E-mail forwarding version 2 of FR notice with comments from Mark Rutzick, NOAA Office of the General Counsel, dated 4/4/03 (withheld)
04/15/03	Rick Sayers	Lamont Jackson	E-mail forwarding version of FR notice with comments from Mark Rutzick, NOAA GC, dated 4/8/03 (withheld)
04/15/03	Rick Sayers	Lamont Jackson	E-mail forwarding version 31 of FR notice with comments from Mark Rutzick, NOAA GC, dated 4/11/03 (withheld)
05/27/03	Don Knowles	Mark Rutzick	E-mail containing e-mail communication from Andrew Emrich, U.S. Department of Justice, to Ruth Solomon, Office of Management and Budget, regarding counterpart regulations (partial redaction; remainder of document released)
09/25/03			Counterpart EA version 8 with Mark Rutzick (NOAA GC) comments (withheld)
no date			Final Rule with changes by Mark Rutzick (NOAA GC) (withheld)
no date			Counterpart regulations FR notice version 3 with Mark Rutzick (NOAA GC) revisions (withheld)
no date			Counterpart regulations FR notice version 6 with Mark Rutzick (NOAA GC) edits (withheld)
no date			Counterpart regulations FR notice version 7 with final Mark Rutzick (NOAA GC) edits (withheld)
no date			Counterpart regulations FR notice version 9 with Mark Rutzick edits (withheld)

no date			Counterpart regulations FR notice version 10 with Mark Rutzick edits (withheld)
no date			Counterpart regulations FR notice version 13 with Mark Rutzick edits (withheld)
no date			Counterpart regulations FR notice version 141 with Mark Rutzick edits (withheld)

**Meyer & Glitzenstein**  
1601 Connecticut Avenue, N.W.  
Suite 700  
Washington, D.C. 20009-1056

Katherine A. Meyer  
Eric R. Glitzenstein  
Howard M. Crystal  
Kimberly D. Ockene  
Tanya M. Sanerib

Telephone (202) 588-5206  
Fax (202) 588-5049  
meyerglitz@meyerglitz.com

March 9, 2005

**By Email & First Class Mail**

Kristen Byrnes Floom, Trial Attorney  
Mark Brown, Trial Attorney  
U.S. Department of Justice, ENRD  
Wildlife and Marine Resources Section  
P.O. Box 7369  
Washington, DC 20044-7369

Re: Defenders of Wildlife v. Norton, Civ. No. 04-1230

Dear Kristen and Mark:

We have now had an opportunity to review the entire Administrative Records regarding the counterpart section 7 regulations challenged in this case. Unfortunately, as set forth below, we have serious concerns with regard to both the form and substance of those Records, especially the one compiled by the Fish and Wildlife Service ("FWS"). As discussed further below, these concerns need to be addressed before plaintiffs can file their motion for summary judgment in this case.

1. As to form, the FWS record for the counterpart regulations is in no shape to be used or cited effectively by either the parties or the Court. To begin with, the FWS has, inexplicably, failed to file or serve any index at all for four entire volumes of the Record (volumes 5-8). To make matters worse, as to these four volumes, there is no page numbering at all. Accordingly, it is simply impossible to effectively locate, cite to, or even understand many specific documents in roughly half of the FWS Record. And, even as to the partial index provided, while there is a column for "Page Number" – suggesting that the FWS, at some stage, intended to actually correlate the documents to page numbers – the column is entirely blank throughout the index.<sup>1</sup>

---

<sup>1</sup> An example of a document that is impossible to understand without an index is the first document in Volume 5 – a set of handwritten notes with the phrase "Service comments" at the



The only explanation we have seen for this sorry condition of the FWS Record is a February 11, 2005 “Note” from FWS Records Officer Johnny Hunt, which is appended to the FWS’s record certification. The “note” states that “Program has indicated the administrative record is complete – though the associated index may not be as comprehensive as is required. However, due to the expected receipt by DOJ, the index could not be updated to comprehensively reflect the record herein.” (emphasis added). In other words, it appears that the FWS – and DOJ – realized that the record was in no shape to be used or cited, but instead of informing the parties and the Court to that effect (and seeking an appropriate extension to get the record in shape), the FWS record was simply filed and served in the inchoate state it was in at that time. It is not clear why the government opted to proceed in this unusual fashion but, in any event, the parties and the Court cannot make use of the FWS record until, at minimum, it is completely paginated, a comprehensive index is prepared, and the index correlates individual documents with page numbers in the record.<sup>2</sup>

2. Consistent with the foregoing point, given the unfortunate state of the FWS Record and index, it is impossible for us to determine whether all of the attachments referred to in various e-mails in the Record have also been included in the Record. In particular, Volumes 6 through 8, which are generically described as containing “interagency e-mails,” contain a plethora of e-mails that, in turn, refer to attachments. However, the attachments do not follow the e-mails (several examples of such e-mails from Volume 7 are attached). While some of the attachments may be elsewhere in the record, it is impossible to ascertain whether this is the case for all (or even most) of the attachments to which the e-mails refer, especially in view of the lack of a comprehensive index. Accordingly, we need the FWS to ensure that all of the attachments referred to in the e-mails are in fact included in the Record and, once again, to prepare an index that allows us to verify that this is indeed the case.<sup>3</sup>

3. The FWS Record is missing specific documents that clearly should be included since they were undoubtedly “before” the agencies when they made their decision. Puerto Rico Higher

---

top. In the absence of an index, it is impossible to even know who prepared these notes or to what they refer.

<sup>2</sup> The FWS certainly knows how to prepare a usable Administrative Record since the record for the Lynx listing issue (as with prior Records on that issue) is sequentially bated-stamped for the entire record and has comprehensive indexes that correlate particular documents to specific page numbers. Likewise, while the NMFS record for the counterpart regulations is not bated-stamped on each page, it at least has numbers on each separate document and a comprehensive index that correlates these page numbers to each document in the record.

<sup>3</sup> Once again, in sharp contrast, the NMFS Record does not suffer from this problem. Almost invariably, when the e-mails in that Record refer to an attachment, the attachment follows the e-mail immediately in the record.

Education Assistance Corporation v. Riley, 10 F.3d 847, 850-51 (D.C. Cir. 1993). In particular:

a. The preamble to the final rule refers to the Clinton Administration's report entitled "Managing the Impact of Wildfires on Communities and the Environment," which was issued September 8, 2000. 68 Fed. Reg. 68255. However, that document is not included in the record.

b. The preamble refers to President Bush's "Healthy Forest Initiative," which was "announced" in August 2002. *Id.* However, that document (or set of documents comprising the "Initiative") is not included in the Record.

c. The final rule defines the National Fire Plan ("NFP") as the "September 8, 2000, report to the President from the Departments of the Interior and Agriculture entitled 'Managing the Impact of Wildfire on Communities and the Environment' outlining a new approach to managing fires, together with the accompanying budget requests, strategies, plans, and direction, and any amendments thereto." 68 Fed. Reg. 68264 (emphasis added). Once again, however, the Record does not include either the September 8, 2000 "report" or any of the "accompanying budget requests, strategies, plans, and direction, and any amendments thereto." Especially since the final rule defines the NFP by reference to these materials, they should certainly be included in the Record.

d. The Record refers to documents reflecting several preexisting "streamlining" efforts involving the "Healthy Forests Initiative" and the NFP. For example, the FWS Record Vol. 4, p. H78 states that the "FWS and [NMFS] have already developed two guidance documents to assist in implementing the Healthy Forests Initiative . . ." (emphasis added). The prior page in the Record (H77) refers to "Finalization of guidance on 'Alternative Approaches for Streamlining Section 7 Consultation on Hazardous Fuels Treatment Projects (Oct. 11, 2002)'" and "Finalization of guidance on 'Evaluating Net Benefit of Hazardous Fuels Treatment Projects (Dec. 10, 2002).'" However, none of these obviously relevant "guidance" documents is in the Record, although they are referred to at various places in the Record. See also July 21, 2003 Memorandum from Acting Regional Director, Region 6, to Director (Record Vol. 5), at 3 ("The Service provided further direction on October 11, 2002, regarding streamlining specifically related to the NFP.").

Likewise, the September 30, 2003 Environmental Assessment ("EA") for the counterpart regulations states (at 4) that the "Services and Action Agencies have several agreements in place, for example the MOA on Section 7 Programmatic Consultation and Coordination," and then analyzes the relevance of those documents to the decision on whether to adopt the counterpart regulations. Once again, however, neither the "several agreements," nor the specific example referred to, are included in the Record, although they are specifically referenced in the EA and are important to understanding that document. Similarly, a memorandum from Region 6 (in Vol. 5) states (at 3) that the "[t]he Forest Service, Bureau of Land Management, the Service, and [NMFS] signed a Memorandum of Agreement on August 30, 2000, committing to working



closer together to improve the interagency consultation process under the ESA.” The memo describes this and other documents as establishing “elaborate systems of streamlining section 7 consultations,” including with regard to NFP projects. Yet, again, none of these documents are included in the Record although they are repeatedly referred to in the Record and bear directly on the issues under review.

The NMFS Record also refers to “Fuels Treatment Streamlining Guidance” and “Joint Consultation Guidance” and sets forth specific dates by when those documents were expected to be completed. See NMFS Record Vol. 1 at Doc. 26, pp. 3-4. However, these documents – which may or may not be the same as the ones referred to in the FWS Record – are also not included in the NMFS Record.

Consequently, we request that the FWS and/or NMFS Records include the August 30, 2000, October 11, 2002, and December 10, 2002 documents, as well as all of the other guidance documents, MOAs, and similar documents referred to in the above paragraphs.

**e.** The FWS record (Vol. 1, p. A09), refers to a “75 page document” of the “activities” encompassed by the NFP. However, although the e-mail suggests that the document is “[a]ttached,” it does not follow the e-mail in the Record, and we have been unable to find any such document in the FWS Record. The NMFS Record, however, also includes an e-mail reference to a “75 page list of activities” and does attach a document. See Vol. 1 at 35. If this is the same document referred to in the FWS Record, please confirm that that is the case.

**f.** The partial index refers to a February 7, 2003 document described as “Morgan’s meeting notes from meeting with large group and Klee.” However, that document is not present in Volume 1, where other, similarly dated documents can be located. Accordingly, that document should either be provided or, if it exists elsewhere in the Record, please identify its location.

**g.** The comments from American Wildlands (in Vol. 5) appear to be missing one or more pages.

**h.** The comments from Grand Canyon Trust (in Vol. 5) is missing p. 3.

**i.** An April 28, 2003 e-mail from Rick Sayers to Gary Frazer (near the end of Vol. 6 of the Record) states that “[s]ome in the field are asking questions about their opportunity to comment on the soon-to-be-proposed Healthy Forest Counterpart regulations,” and recommends that “we could have the Director send a specific request for comments to the Field and compile in DCHRS. This option would mean our administrative record would reflect any comments submitted by the Field.” However, the Record does not appear to contain such comments from the FWS Field Offices, nor does it reflect how this suggestion was resolved. If Field Office comments were in fact received and compiled in some form, they should be included in the Record. If Field Office comments were not received and compiled in the manner

recommended in the April 28, 2003 e-mail, please confirm that fact and, if there are any additional records bearing on the decision not to compile such comments, those documents should be included in the Record.

j. The privilege log (but not the partial index) refers to a 11/19/02 e-mail from Rick Sayers to Gary Frazer, from which one paragraph is being withheld. However, we have been unable to locate this redacted document anywhere in the Record.

4. The government has not furnished separate Administrative Records for the Forest Service, BLM, or any of the other “action agencies,” although these agencies were extensively involved in the drafting of the regulation and identified in both the proposed and final rules as having “cooperat[ed]” in the “develop[ment]” of the regulations. 68 Fed. Reg. 68254. Hence, while the Records contain interagency communications between, e.g., the Forest Service and FWS/NMFS, they do not contain the intra-Forest Service (and other action agency) documents bearing on how or why those agencies – which are purportedly the principal beneficiaries of the counterpart regulations – decided to cooperate in the promulgation of the regulations, and expressly signed off on their issuance. Accordingly, we request that defendants provide a full explanation as to why separate, comprehensive Administrative Records for the action agencies have not been provided.

Moreover, even if the government can proffer some justification for not providing such Records pertaining to the regulations, plaintiffs have specifically challenged the “related ACAs and ‘training’ requirements.” Complaint at ¶ 103. As you know, both BLM and the Forest Service signed the ACA’s, which are agreements between those agencies and the FWS/NMFS. Accordingly, there is no plausible justification for submitting FWS and NMFS Records pertaining to the ACA’s and training requirements – as the government has – but failing to produce such Records for the Forest Service and BLM.<sup>4</sup>

5. The FWS has withheld or redacted several e-mails that contain or reflect communications with OMB, as well as the Justice Department. See Privilege Log Nos. 21, 22, 23, 24, 26, 27, 28, 31, 33, 34, 35. While we have no objection to the withholding of communications with DOJ, there is no basis for redaction of communications with OMB. Accordingly, please confirm that all such communications have been included in the Record(s).

6. Finally, the CD-Rom disc containing the “Comments on the Counterpart Regulations for Healthy Forest Service Initiative” is cracked and therefore unusable. Accordingly, we would

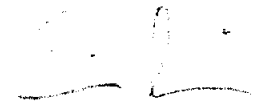
---

<sup>4</sup> In this connection, we note that the government has invoked the attorney-client privilege with regard to several documents concerning the ACAs based on communications with counsel for the Forest Service. See FWS Privilege Log at 46, 48, 53. We fail to see how the government can invoke the attorney-client privilege with regard to counsel for the Forest Service – which presumes that the Forest Service was making a decision as to which its counsel was rendering advice – without producing a Record for that agency.

appreciate another copy of that disc.

We ask that you respond to all of the points outlined in this letter as soon as possible and by no later than March 16, 2005. Given the extent of the issues set forth above – and the fact that it is simply impossible to effectively use or cite to the FWS Record in its present form – plaintiffs will have little choice but to seek some extension in the current briefing schedule. However, in order to determine how extensive that extension must be, or whether plaintiffs must file a motion to supplement the record prior to, or along with, their summary judgment brief, it is imperative that plaintiffs have the government's responses to the foregoing points as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric R. Glitzenstein".

Eric R. Glitzenstein  
Tanya Sanerib

ERG/ms

Attachment

cc: J. Michael Klise (by mail)



**Delfinia Montano**

08/04/2003 04:03 PM

To: Patrick Leonard/ARL/R9/FWS/DOI@FWS, Michelle  
Morgan/ARL/R9/FWS/DOI@FWS

cc:

Subject: Region 2 comments to proposed counterpart regulations

Here is the memo and the attached comments for your consideration. I expect the memo will be signed today by the RD without any changes.

Thanks,  
Delfie



Transmittal memo counterpart regs.:



regional comments to counterpart regulations

Delfinia M. Montano  
Regional Fire Consultation Coordinator  
U.S. Fish and Wildlife Service, Endangered Species  
P.O. Box 1306  
Albuquerque, NM 87103  
(505) 248-6401/Fax (505) 248-6788



"Barry Thom"  
<Barry.Thom@noaa.gov  
v>

To: Michelle Morgan <Michelle\_Morgan@fws.gov>  
cc:  
Subject: blurb on Idaho Pilot

08/11/2003 12:36 PM

Michelle,

I quickly tried to summarize the new "batched" alternative for the EA. You can insert it if you wish. It basically allows for an annual review of a set of batched NLAA's that meet criteria established on a checklist. The Services then concur on the list of projects. The program does include training, reporting and review.

Take a look and see if it is worthy of the EA.

-barry



EA batched alternative.wp